

ESTTA Tracking number: **ESTTA286781**

Filing date: **05/29/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176744
Party	Plaintiff DC Comics and Marvel Characters, Inc.
Correspondence Address	Jonathan D. Reichman Kenyon & Kenyon, LLP One Broadway New York, NY 10004 UNITED STATES mmorris@kenyon.com, jreichman@kenyon.com, mmarsh@kenyon.com, plum@kenyon.com, rcollins@kenyon.com
Submission	Motion for Summary Judgment
Filer's Name	Michelle C. Morris
Filer's e-mail	mmorris@kenyon.com, jreichman@kenyon.com, mmarsh@kenyon.com, rcollins@kenyon.com
Signature	/Michelle C. Morris/
Date	05/29/2009
Attachments	JDR Ex G-K.pdf (49 pages)(785506 bytes)

EXHIBIT G

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of : Michael Craig Silver
Serial No. : 78/823,155
Filed : February 24, 2006
For : SUPER HERO
Published Official Gazette : 1/16/07
Opposer : DC Comics and Marvel Characters, Inc.

-----X	
DC COMICS and	:
MARVEL CHARACTERS, INC.	:
	:
Opposers,	:
	:
	Opposition # 91/176744
vs.	:
	:
MICHAEL CRAIG SILVER	:
	:
Applicant,	:
-----X	

**APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR
ADMISSION**

1. Admit
2. Admit
3. Admit
4. Deny
5. Deny
6. Deny
7. Deny
8. Deny
9. Deny
10. Deny
11. Deny
12. Deny
13. Deny.
14. Deny
15. Deny
16. Deny
17. Deny
18. Deny
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20. Deny

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98. Deny
99. Deny
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101. Deny

Dated: June 6, 2008

By: _____



Michael Silver

3229 Steiner Street
San Francisco, CA 94123
(530) 320-6488

Applicant

PROOF OF SERVICE

I hereby certify that a true and complete copy of APPLICANT'S RESPONSE TO
OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION has been served by
mailing said copy on June 6, 2008, via first class mail, to:

Kenyon & Kenyon LLP
Jonathan D. Reichman
One Broadway
New York, New York 10004


Michael C. Silver

EXHIBIT H

**APPLICANT'S AMMENDED / SUPPLEMENTAL RESPONSES TO OPPOSER'S
DOCUMENT REQUEST NOS. 1-14, 16-30 AND 35**

1. No documents applicable.
2. No documents applicable.
3. No documents applicable.
4. See Figure 1 detailing USPTO email confirmation of SUPER HERO mark application receipt.
5. No representative samples of the product that is intended to be sold exists. No product in connection with SUPER HERO has ever been sold, distributed for sale or offered for sale.
6. No date of first use exists so there are no representative samples of purchase orders, invoices, communications, and or any other documents or materials related to any of Applicant's products.
7. A representative sample to illustrate Applicants intended use of SUPER HERO on letterhead, signs, websites, invoices, labels, tags and product packaging can be evidenced in Figure 1 by the use of the Standard Characters depicting the mark, which are without claim to any particular font, style, size, or color.
- ✓ 8. Applicant has no documents concerning a licensing policy with regard to SUPER HERO.
9. Applicant has no documents concerning any assignment of SUPER HERO.
10. Applicant has no documents concerning any license or other agreement regarding SUPER HERO.
11. Applicant has no documents concerning any negotiations for license or other agreement regarding SUPER HERO.
12. Applicant has no documents concerning any effort to exploit or commercialize any product under SUPER HERO.
13. Applicant has no documents concerning any application for registration, or attempted registration for SUPER HERO that is different than the subject application.
14. Applicant has no documents that show total sales. No sales have occurred under SUPER HERO either by applicant, a licensee of applicant or other third party.

16. SUPER HERO has appeared in no advertisements, promotional items, marketing materials, letters, posters, brochures, leaflets, or flyers printed, disseminated, or commissioned by applicant.

17. No television commercials, video presentation, or radio script has ever been prepared or commissioned by Applicant.

18. No documents exist to show Applicants actual or planned annual expenditures on efforts to advertise, market or otherwise promote any of its products offered for sale under SUPER HERO.

19. No documents exist.

20. No documents exist.

21. No documents exist.

22. No documents exist.

23. No documents exist.

24. No documents exist.

25. No documents exist.

26. See Figure 2. described as "Log Notes" from discussion about opposition.

27. See Figure 2. described as "Log Notes" from discussion about opposition.

28. No documents exist.

29. No documents exist.

30. No documents exist.

35. Applicant has no document retention policy and no documents exist that embody, explain or discuss any such policy.

Dated: October 2, 2008

By:



Michael Silver
64 Lincoln Drive
Sausalito, CA 94965
(530) 320-6488

Applicant

PROOF OF SERVICE

I hereby certify that a true and complete copy of APPLICANT'S AMMENDED /
SUPPLEMENTAL RESPONSES TO OPPOSER'S DOCUMENT REQUEST NOS. 1-
14, 16-30 AND 35 has been served by mailing said copy on October 2, 2008, via first
class mail, to:

Kenyon & Kenyon LLP
Jonathan D. Reichman
One Broadway
New York, New York 10004


Michael C. Silver

EXHIBIT I

APPLICANT'S AMMENDED /SUPPLEMENTAL RESPONSES TO
INTERROGATORY NOS. 1-27

1. Products for intended use are those products described in "International Class 003" of the Applicant's trademark application.
2.
 - a. Product not yet in use.
 - b. Intended to be used in commercial retail sales as a packaged good.
 - c. Product is not yet produced.
 - d. No sales present.
3. Michael Silver-Applicant
4. Michael Silver- Applicant
5. Michael Silver-Applicant
6. Channels of trade for intended sales include distributors, retail stores and internet sales.
7. The average consumer that might be most likely to purchase the Applicant's product would be one that has interest in the products specified in "International Class 03" as detailed in the Applicant's trademark application. No average income, age or profession of the "average consumer" is important to the Applicant.
8. No advertising of any products has occurred and no advertisement of the Applicant's products would be done through the normal paid advertising channels. All promotion of the product would be done by word of mouth from family and friends.
9. No advertising of the product has occurred nor will any advertising occur on any paid television, radio station or internet website. All promotion will be done as a grass roots effort to minimize expenses and will focus on word of mouth from friends and family.
10. Applicant does not know of any similar mark of SUPER HERO that has been used by any third party.
11. Applicant intends for all promotion is to be done as a grass roots effort and will not pay for any advertising, marketing or promotion.
12. Applicant does not know the retail or wholesale prices which Applicant plans to sell the product. No product has been sold presently.
13. No product has been sold yet. Applicant hopes to sell product to stores that welcome small, new brands that have quality products.
14. Applicant plans to sell it's product to all consumers no matter what gender, age group, education level or socioeconomic status they hold. No product has been sold yet.

15. Michael Silver-Applicant

16. Applicant first became aware of Opposer's marks on 1/31/07 when Opposer's counsel contacted Applicant. Opposer seems to have many marks and Applicant does not claim to know the existence of all of Opposer's marks, which marks are the Opposer's, when those marks were created and which marks are trademarked.

17. Applicant has not had any inquiry, question, comment, concern or belief expressed by any third party as to the origin of any of Applicant's products or any third party products or services including those of Opposer.

18. No complaint, protest, objection or comment has been directed to Applicant by any third party relating to Applicant's product or to Applicant's use of SUPER HERO.

19. No market study by Applicant or anyone acting on Applicant's behalf, has ever conducted a market study, survey, or opinion poll concerning SUPER HERO or Opposer's marks.

20. No disputes exists, besides the Opposer's trademark appeal, that might violate any purported rights to SUPER HERO.

21. No search regarding the availability of SUPER HERO was done by anyone acting on Applicant's behalf. Applicant does not believe that any search was ever done by himself. Applicant does not remember if any search of SUPER HERO was ever done by himself. Applicant has no notes or recollection of any search for SUPER HERO.

22. Applicant has not sought or received the opinion of any attorney.

23. Applicant has not, nor anyone acting on Applicant's behalf, has ever entered into a license, assignment or other agreement regarding SUPER HERO

24. Neither Applicant nor anyone acting on Applicant's behalf, has ever entered into negotiations with a potential licensee or other third party regarding the exploitation of any product under SUPER HERO.

25. Neither Applicant nor anyone acting on Applicant's behalf has made any effort to exploit or commercialize any product under SUPER HERO.

26. Applicant selected SUPER HERO after hearing someone that was not known to the Applicant, yell "super hero" to their dog in the park and the dog walked back to its owner. Because the dog was so cute the Applicant decided he would name the "International Class 3" products after the dog.

27. Applicant has not taken any steps towards manufacturing, distributing, selling, and or promoting any products under the SUPER HERO trademark.

✓
Dated: October 2, 2008

By:

A handwritten signature in black ink, appearing to read "Michael Silver", written over a horizontal line.

Michael Silver
64 Lincoln Drive
Sausalito, CA 94965
(530) 320-6488

Applicant

PROOF OF SERVICE

I hereby certify that a true and complete copy of APPLICANT'S AMENDED /
SUPPLEMENTAL RESPONSES TO OPPOSER'S FIRST SET OF
INTERROGATORIES TO APPLICANT has been served by mailing said copy on
October 2, 2008, via first class mail, to:

Kenyon & Kenyon LLP
Jonathan D. Reichman
One Broadway
New York, New York 10004


Michael C. Silver

EXHIBIT J

FIGURE 1.

Michael Silver

From: teas@uspto.gov
Sent: Friday, February 24, 2006 2:26 PM
To: mike@realtyia.com
Subject: Received Your Trademark/Service Mark Application, Principal Register Form for serial number 78823155

MARK: SUPER HERO (Standard Characters)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The literal element of the mark consists of SUPER HERO.

We have received your application and assigned serial number '78823155' to your submission. The summary of the application data below serves as your official filing receipt. For electronically-submitted applications, the USPTO will no longer mail a paper filing receipt. If the USPTO later determines that no filing date was justified, your submission will be returned, and your filing fee will be refunded. You could then, if possible, cure the deficiency, and re-file the application.

If you determine that you made an error in the information you entered, you may file a preliminary amendment electronically, stating your proposed correction, at <http://www.uspto.gov/teas/eTEASpageB2.htm>. NOTE: You cannot file a Preliminary Amendment until at least 30 days after initial filing of the application. Prior to that time, the serial number will not appear in the USPTO database (even though the number was assigned at the time of filing), preventing the uploading of new data.

In approximately SEVEN (7) months, your application will be assigned to a USPTO examining attorney. The examining attorney will determine whether the change proposed in the amendment is permissible, within the normal course of his or her review of the application. Please note that not all errors may be corrected; for example, if you submitted the wrong mark or the incorrect goods and/or services, if the proposed correction would be considered a material alteration to your original filing, this will NOT be accepted. Unfortunately, your only recourse in that event is to re-file - your fee would NOT be refunded. Once you submit an application, either electronically or through the mail, we will not cancel the filing or refund your fee, unless the application fails to satisfy minimum filing requirements. The fee is a processing fee, which we do not refund even if we cannot issue a registration after our substantive review.

NOTE: If you have a *technical* concern about your specific application, or a question or comment about electronic filing in general, please send an e-mail to teas@uspto.gov. For *general* (i.e., non-technical) trademark information, please e-mail TrademarkAssistanceCenter@uspto.gov, or telephone 1-800-786-9199.

Status Information: Check [Trademark Applications and Registrations Retrieval](#) to view current status information, as well as the complete prosecution history. Do not attempt to check status until at least 15 days after submission of a filing, to allow sufficient time for all USPTO databases to be updated. You can view all items listed in the prosecution history section online at [Trademark Document Retrieval](#), including all office actions sent by the USPTO.

The applicant, Michael, Craig Silver, a citizen of United States, residing at 211 Woodhill Court, Tahoe City, California, United States, 96145, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

International Class 003: After sun creams; Beauty creams for body care; Cosmetic products in the form of aerosols for skincare; Non-medicated sun care preparations; Skin moisturizer; Skin toners; Sun block; Sun care lotions; Sun screen; Sun tan oil; Sun-block lotions

If the applicant is filing under Section 1(b), intent to use, the applicant declares that it has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(b), as amended.

If the applicant is filing under Section 1(a), actual use in commerce, the applicant declares that it is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services, and lists below the dates of use. 15 U.S.C. Section 1051(a), as amended.

2/24/2006

If the applicant is filing under Section 44(d), priority based on foreign application, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and asserts a claim of priority based on a specified foreign application(s). 15 U.S.C. Section 1126(d), as amended.

If the applicant is filing under Section 44(e), foreign registration, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and submits a copy of the supporting foreign registration(s), and translation thereof, if appropriate. 15 U.S.C. Section 1126(e), as amended.

The USPTO is authorized to communicate with the applicant or its representative at the following email address:
mike@realityla.com.

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration Signature

Signature: /michael silver/ Date: 02/24/2006
Signatory's Name: /michael silver/
Signatory's Position: owner

TEAS XML SUBMISSION

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2/24/2006

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are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false
statements, and the like, may jeopardize the validity of the application or any resulting registration,
declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she
believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the

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application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.</boilerplate-text>

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300aa441171589ec294e961f1cf854ee6b-CC-595-20060224170657972657</teas-stamp>

<filing-description>Trademark/Service Mark Application, Principal Register</filing-description>

<reply-name>SILVER, MICHAEL, CRAIG</reply-name>

<reply-email>mike@realtyla.com</reply-email>

</filing>

</uspto-tm-document>

Thank you,

The TEAS support team

Fri Feb 24 17:25:39 EST 2006

STAMP: USPTO/FTK-71.142.219.55-20060224172539012465-78823155-300aa441171589ec294e961f1cf854ee6b-CC-595-20060224170657972657

2/24/2006

FIGURE 2.

1/31/07 | CALL ANDREW BAXLEY
FOR HELP 571-272-4253

Atty John Resnickman - (212) 908-6256*
(212) 425-7200

Called me @ letter

SuperHero

Legal

Atty

LOG
NOTES

2/2/07 J.R. Called wants extension

- Courtesy - (Counter Proposal)
↓
(\$)

Settlement Notice

- 1) Intent on Marketing Product - Done.
- 2) Presently have national distrib of other family product.
- 3) Know distrib channels of Bus =>
↑ \$\$\$
- 4) Superhero has merit claim in this case
- 5) Marvel's interest unknown to me but:

Terms ~ Substantial ~ SFC ~ Distrib

Subscribed
Affny

2/5/07

1-676 80022 Ref# USPTO

1st Extension done 2/7/07 ~ 120 days possible
1st 30
2nd 60 > 90 days
initial ~ 3rd 30 - 30
120 day limit
must => 180 Max Extension
"Notice of Opposition"

"TTAB" - chap 200 - Ext
chap 300 = Oppost

Consent

- Already Reviewed by Affny.
- Published already -> Registration

DC is holding up extension

2/5/07 M. left w/ John @ extension 30 days avail.

2/6/07. J.R. to email consent form

3/3/07 Returned JR's call

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John to get licensing terms.

3/15/07 ① Grant License on a Royalty Basis.

- ① 100% profits are mine - Marvel own Name

(No)

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\$ to buy & then I license back name

3/19 - JR calls back - I tell him I to CB.
- They want to buy TM outright.

11/27/07 xTheresa | Super Hero | USPTO
Trademark TRIAL Appeal (571) 272-8500
800-786-9199

5/1/07 M. left (Serial 78823155) (571) 272-8500
← USPTO CB → new M. S Hero

Opposition Due - 5/23/07

★

- "Admit or Deny assertions"
- Send electronic Response

211 w/H Address is of record

→ TM → left side → on-line filing
'ESTTA'

- need answer in opposition

on-web -

Notes Answer over

Andrew Baxley Esq
571-272-4253

Back 5/9/07

5/18/07 Answer Filed

7/24/07 Atty: Gaynor Barbara Anne → Barb
tel (571) 272-9164 (Office 115)
M. left x29164 mail

Change - PO Box tel 571-272-4253

7/25/07 - Barb says answer received
interlocutory x Andrew Baxley
Atty < Trademark Trial Appeal Board

- USA Education, Inc.
- Nellie Mae Corporation
- Nellie Mae Education Loan Corporation
- SLFR, LLC
- SLM Mortgage Corp. - VA
- Education Debt Services, Inc.
- SLM Funding Corporation

- Student Loan Marketing Association
- Student Loan Funding Resources LLC
- Secondary Market Services, LLC
- SLM Financial Corporation
- SLM Financial Corp. - WV
- Sallie Mae Education Trust
- USA Group Noel Levitz, Inc.

- Sallie Mae Servicing L.P.
- SLM Education Loan Corp.
- HEMAR Insurance Corporation of America
- HICA Surety Corporation
- SLM Mortgage Corp. - NC
- Student Assistance Corporation
- True Careers, Inc.

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Address: 211 WH

(7/25/07)

PO Box

USPTO
Electronic Forms
of corresp. Address
Form

Andrew Baxby
Esp.

(571)-272-~~7164~~

"Opposition Proceeding"

4253

5/11/07 - Andrew Barby Esq. | Due 5/23/07 USPTO Slips

- Must file an answer

- Trademark Manual ^{USPTO} ^{TM Board} ^{Proced.}
- TMS → TTAB → ^{Manual} ^{Format}

TTAB = Section 309 → Contents of answer
(A) "Admit or Deny" address each #
(B) No arguments needed.

① Pleading Stage - Now

② Discovery

③ No advice Commercial Use

④ File on-line - US 3 - No form

Notes

Q's

Format/Reg's - Name of my (Answer to noticed) ^{oppos?}
Q's Note P.S. by #5? & Reference = "Deny"

Petition for cancellation of Opposition?

11 pt type - double spaced (or 12?)

pg 34

"IN THE US PATENT & TRADEMARK..."

ID of Opposition App. @ Opposition #?

Registration # "for petition to cancel"

7/25/07 M. w/ A. Barley Esq @ States.

USPTO
Share

AB says discovery period
ends 10/30/07

A filed
5/18/07

- Mark "Suspended" 11/1/07

- 5/18/07 - (Oct 25/07) - 0

- Trademark trial & Appeal Bd. 8-5 AM EST

Notice & trial date

(571) 272-8500
TEL

(Same Attorney)

11/2/07 - Dwayne Switchboard
Q/A Email Correspondence
2) Mail Address.

opposition # only
91176744
= (Proceeding #)

10/25/07 - ^{proceeding hearing} Suspended → Sum. judgement (10/30/07)

11/2/07 Paralegal - Clara Vela (571) 272-4316 CB @ 11/9/07

→ M. left w/ Clara 11:30 PST

259 - Andrew Barley 571-272-4253 M. 11:45 PST

T-TAB → "A Address in
Bd Proceeding" File
- online -

Oct 25 → 35 days 11/2/07

tell opposition
A & Correspondence
Address to
2000 Broad

→ T-TAB View - #8 submitters

Att: Gaynor, Barbara Anne - Examiner

Super #

11/29/07

(571) 272-9164 #115 (T/L0115)

Andrew Barbey - "Brief & Response" → Due

- Evidence to create issue of
Material fact - Response to

~~Due~~ CP Issue:

§ 528 TBMP Response to

Summary of -

TTAB online Filing #7 → EST 12 AM

12/27/07 - Mailed Copy of "A Brief in Response to Op request
for Summary of & Proof of Service"

2/20/08 TTAB = opposition

5/5/08 Discovery Closes

12/19/07 - oral Argument Denied

X A Baxley

5/14/08

Superior
USPTO

Central District → Angela

did Sum. Judgement Denial TT

571-272-8500

Must: w/in 35 Days

(Extra 5 b/c by mail)

400 chapt TBMP

Ref
GUIDE

- Serve to other side

6/9/08

Discoverable 1/4

Format: Subsection w/in 400

- Provide to extent discover
- Don't forget to object on merits
- File timely

- Request for

6/6/08 - (Serve to other side) + mail
Cert of mail.

X Andrew Baxley

⊖ No TBMP § 110 Mail Procedure pg 57

06/14

⊖ only serve to other side; not USPTO

Requests for Admission to Apply.

6/5/08

USPTO
SuperH

1) Prod. of Docs to Apply

(35)

3) Opponent 1st Set of Interrogatories to Apply.

[Q15] Mail sent 6/6/08 & Submitted TEAS
OK for timeline?

✓ 2) Date of Docs created \approx Apply. date?

③ Privilege Basis Fed. R. Civ. P. 26(b)(5)
Express claim, nature of Docs,

④ # of request herein to which the Doc
is responsive

5) Object on Merits

Objections 410 pg 57.

Cooperate pg 54-56

Fed

6/9/08 & M'd Back My Answers

Testimony Period \rightarrow 700 chapters

Notices: Depo, Reliance, Witness,

They have burden of Proof

~~7/5/08 - They will start~~

Print My Responses

CB Jonathan
Reichman

7/10/08

Super H
Legal
Dispute
Notes
Log

- Will do a lease back to me.

& Compensate me for my efforts

8/14/08

7/3 Started

7/7/08

Suspended
for @ 40 days

→ SBCglobal.net

10/2/08 Only - respond -

Officer's - They will

Serve notice on me.

Supplemental
Responses

FIGURE 2.

SuperH.
FM

2/24/06 USFTO Application

Submitted \rightarrow 7 months

Due
9/24/06

To Do:

- 1) Find research options
- 2) Look for marketing options
- 3) Consider time-line

- Bus Plan

- Prod.

- Samples

} outsource?

1/31/07 CALL ANDREW ISAXLEY
FOR HELP 571-272-4253

SuperHero

Atty John Reichenman - (212) 908-6256*
(212) 425-7200

Legal
Atty

Called me @ letter

LOG
NOTES

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- Courtesy - (Counter Proposal)
↓
(#)

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- 3) Know distrib channels & Bids =>
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- 5) Marvel's interest unknown to me but:

Terms x Substantial x SFC x Distrib

Enscreen
Affny

2/5/07

1-676 800 22 Ref# USPTO

1st Extension done 2/7/07 2 120 days possible
1st 30
2nd 60 > 90 days
initial => 3rd 30 - 30
120 day limit
must => 180 Max Extension
"Notice of Opposition"

"TTAB" - chap 200 - Est
chap 300 - Oppost

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- Already Reviewed by Affny:
- Published already -> Registration

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3/15/07 ① Grant License on a Royalty Basis.

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(No)
② ASK JR @ \$ to buy-out right (or)

\$ to Buy & then I license back name

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They want to buy TM outright.

11/27/07 X Theresa | Super Hero

USPTO

800-786-9199

Trademark TRIAL Appeal (571) 272-8500

5/1/07 M. left (Serial 78823155) (571) 272-8500
USPTO CB → new M.

S Hero

Opposition Due - 5/23/07

★

- "Admit" - "Accept or Deny assertions"
- Send electronic Response

211 w/H
Address is
of Record

→ TM → left side → on-line filing
'ESTTA'

- need answer in opposition

on-web -

Notes
Answer
over

Andrew Baxley Esq
571-272-4253

Back 5/9/07

5/18/07 Answer filed

7/29/07 Atty: Gaynor Barbara Anne → Barb
tel (571) 272-9164 (Office 115)
(M. left) X29164 mail

Change - PO Box tel 571-272-4253

7/25/07 - Barb says answer received
interlocutory X Andrew Baxley < Trademark
Trial Appeal Board

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Address: 211 WH

7/25/07

PO BOX

USPTO
Electronic Forms
of corresp. Address
Form

Andrew Baxby
Esq.

(571) 272-~~7164~~
4253

"Opposition Proceeding"

5/11/07 - Andrew Barby Esq. | Due 5/23/07 (USPTO Sumo)

- Must file an answer

- Trademark Manual

- TMS → TTAB → ^{USP TM Board} Manual ^{Proced.} _{Format}

TTAB = Section 309 → Contents of answer.

(A) "Admit or Deny" - address each #

(B) No arguments needed.

① Pleading Stage. - Now

② Discovery

③ No advice

Commercial
type

④ File on-line - US 3 - No form

Notes

Q's

Format/Regs - Name of my (Answer to noticed oppos?)
Q's) Note P.S. by #s? & Reference = "Deny"

Petition for cancellation of Opposition?

X 11 pt type - double spaced (or 12?)

(pg 34) X "IN THE US PATENT & TRADEMARK..."

X ID of Opposition App. Opposition #?

① Registration # " — for "petition to cancel"

7/25/07 M. w/ A. Bortley Esq @ Status.

USPTO
Shere

AB says discovery period
ends 10/30/07

A filed
5/18/07

- Mark "Suspended" 11/1/07

- 5/18/07 - (Oct 25/07) - 0

- Trademark trial & Appeal Bd. 8-5 AM EST

- Notice & trial date

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TEL

(Same Attorney)

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2 Mail Address.

Opposition # only
91176744
Proceeding #

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11/2/07 Paralegal - Clara Vela (571) 272-4316 CB @ 11/9/07

(from Home)

→ M. left w/ Clara 11:30 PST

259

Andrew Bortley

571-272-4253 M.

11:41 PM

T-TAB → "A Address in Bd Proceeding" File - online -

Oct 25 → 35 days

11/2/07

Tell opposition

Set Correspondence Address to 2000 Broad

→ T-TAB View - #8 sub menu

Att: Gaynor Barbara Anne - Examiner

Super #

11/29/07

(571) 272-9164 #115 (T/L0115)

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Material fact - Response to

~~The~~ CP Issue:

§ 528 TBMP Response to

Summary of -

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for Summary of & Proof of Service"

2/20/08 TTAB = opposition

5/5/08 Discovery Closes

12/19/07 - oral Argument Denied

x A Baxley
Central District → Angela
did Sum. Judgment Denial TT 571-222-8500
Superior
Certo

Must: w/in 35 Days (Extra 5 b/c by mail)
400 chapt TBMP Ref GUIDE
- Serve to other side

Discoverable 1/4

Format: Subsection w/in 400

- Provide to extent discover.

- Don't forget to object on Merits
File timely

- Request for

6/6/08 - Serve to other side + mail Cert of mail.
only

⊖ No TBMP § 110 Mail Procedure pg 57

06/14

⊖ only serve to other side; not USPTO

Requests for Admission to Apply.

6/5/08 USPTO
SuperH

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(35)

3) Opponents 1st Set of Interrogatories to Apply.

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Express claim, nature of Docs,

④ # of requests herein to which the Doc
is responsive

5) Object on Merits

Objections 410 pg 57.

Cooperate pg 54-56

Fed

6/9/08 & M'd Back my Answers

Testimony Period \rightarrow 700 chapters

Notices: Depo, Reliance, Witness,

They have burden of Proof

~~7/5/08 - They will start~~

↑ Print my Responses

// CB Jonathan
Reichman

7/10/08

Super H
Legal
Dispute
Notes
Log

- Will do a leak back to me.

& Compensate me for my efforts

8/14/08

7/3 Started

7/7/08

Suspended

for @40 days

→ SBCglobal.net

10/2/08 Only - respond -

Officer's → They will

Serve notice on me.

Supplemental
Responses

PROOF OF SERVICE

I hereby certify that a true and complete copy of APPLICANT'S AMMENDED Figure 2.
has been served by mailing said copy on October 3, 2008, via first
class mail, to:

Kenyon & Kenyon LLP
Jonathan D. Reichman
One Broadway
New York, New York 10004


Michael C. Silver

EXHIBIT K



U.S. Food and Drug Administration

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FDA Aims to Upgrade Sunscreen Labeling

[Printer-friendly PDF \(394 KB\)](#)**On this page:**

- [What do "UVA" and "UVB" stand for?](#)
- [The Four-Star System](#)
- [Sunscreen Not the Only Option](#)
- [Changes With SPFs, Too](#)

FDA wants the labeling on your sunscreen to tell you more about protection against the sun's harmful rays.

Under a new regulation, the agency has proposed that sunscreen labeling be expanded to provide

- a four-star rating system that informs consumers how well the product protects them against "Ultraviolet A" (UVA) light.
- Information on other ways people can limit their risks to dangers posed by overexposure to sunlight.

What do "UVA" and "UVB" stand for?

UVA and UVB are types of ultraviolet (UV) radiation emitted by the sun. Although the atmosphere's ozone layer shields us from most of this radiation, the UV light that gets through can cause problems.

UVB light is primarily responsible for sunburn. UVA light penetrates the skin more than UVB light does, and causes tanning. Both types of UV light contribute to premature skin aging, skin cancer, and other types of skin damage.

Currently, sunscreen labels are required to carry a "Sunburn Protection Factor" (SPF) value that informs potential users how well the product protects against UVB light.

[back to top](#)**The Four-Star System**

Under the proposed regulation, a UVA star rating would be prominently displayed on sunscreen labels, near the SPF rating.

"For more than 30 years, consumers have been able to identify the level of UVB protection provided by sunscreens using only sunburn protection factor or SPF values," said Andrew C. von Eschenbach, M.D., Commissioner, Food and Drugs. Under this proposal, "consumers will also now know the level of UVA protection in sunscreens, which will help them make informed decisions about protecting themselves and their children against the harmful effects of the sun."

With the proposed UVA rating system

- One star will represent low UVA protection
- Two stars, medium protection



Getty Images

- Three stars, high protection
- Four stars, the highest UVA protection available in an over-the-counter (OTC) sunscreen product.
- If a sunscreen product does not rate at least one star, FDA is proposing that its labeling bear a "no UVA protection" marking on the front label, near the SPF value.

Sunscreen Not the Only Option

In addition to the new rating system, FDA wants sunscreen labels to advise consumers that using a sunscreen is just one way they can protect themselves against the sun. Limiting time in the sun and wearing protective clothing as part of a comprehensive sun protection regimen are other recommendations that would be prominently displayed on labels. Using sunscreens liberally and reapplying frequently would also be advised.

[back to top](#)

Changes With SPF's, Too

FDA also wants to make changes regarding protection against UVB light. The agency has proposed amending its existing rule on UVB products to increase the maximum sunburn protection factor from SPF 30+ to SPF 50+.

The proposed rule is asking the public to comment on the use of nanoparticle ingredients in sunscreens, and is proposing to

- make minor changes in SPF (UVB) testing procedures consistent with current science, to further enhance the accuracy of SPF values.
- allow new combinations of active ingredients.

For More Information

FDA Press Release

www.fda.gov/bbs/topics/NEWS/2007/NEW01687.html

Questions and Answers

www.fda.gov/cder/drug/infopage/sunscreen/qa.htm

FDA Sunscreen Web page

www.fda.gov/cder/drug/infopage/sunscreen/default.htm

FDA's Web site for OTC drug products

www.fda.gov/cder/Offices/OTC/consumer.htm

FDA's Tanning Web site

www.fda.gov/cdrh/tanning/

Sun Safety: Save Your Skin!

www.fda.gov/consumer/updates/sun072407.html

[back to top](#)

Date Posted: August 23, 2007



FDA / Zebulon Rogerson

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